



**ITI**

Promoting Innovation Worldwide

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Dear Mr. Glock,

Thank you for organizing the meeting between the Information Technology Industry Council (ITI) and members of the Federal Acquisition Regulatory Council (FAR Council) on July 21, 2021, which was held to discuss ITI's petition to initiate rulemaking. As discussed in the meeting, ITI's petition requested that the FAR Council amend the Federal Acquisition Regulation (FAR) at 48 CFR §23.704, to require the U.S. Government to purchase electronic products and services that demonstrate compliance with at least one of multiple acceptable standards or ecolabels, as identified by the FAR or the U.S. Environmental Protection Agency (EPA), including but not limited to the Electronic Products Environmental Assessment Tool (EPEAT). Currently, the rule requires federal agencies to meet at least 95 percent of their requirements for listed electronic products with EPEAT-registered products only, with no acceptable alternatives. In the interest of open competition in the sustainable marketplace and ensuring no reduction in sustainability benefits, the ITI petition is requesting that additional standards and ecolabels be eligible for federal IT procurement. We believe that competition will benefit the taxpayer by promoting efficiencies that could reduce government costs. The regulatory change will also ensure the U.S. Government's purchasing practices align with emerging international and industry best practices for sustainability.

Additionally, ITI notes that FAR 27.704(a)(1) is outdated and references expired authorities as the basis for requiring contractor compliance with EPEAT. Given that it has been one year since ITI met with the FAR Council and we have not seen any public-facing action from the FAR Council regarding ITI's petition, we are writing to respectfully request a written update on the status of the FAR Council's consideration of ITI's petition.

Additional supplementary information follows below —please do not hesitate to contact us with questions or to discuss any of these points further.

Very Respectfully,

Megan Petersen  
Vice President of Policy, Public Sector and Counsel  
Information Technology Industry Council (ITI)

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**Desired Outcome:**

ITI urges the FAR Council to amend the FAR to permit the U.S. Government to purchase electronic products that demonstrate compliance with one of multiple acceptable specifications, standards, or ecolabels (including but not limited to EPEAT), as determined to meet the government’s requirements by the EPA, rather than requiring all product categories covered by EPEAT to be registered with EPEAT alone as a condition of purchase. Amending the FAR is also necessary to ensure current regulatory and federal contract requirements do not rely on expired authorities.

**Analysis Supporting Desired Outcome:**

*I. FAR 23.704(a)(1) establishes federal contract requirements for EPEAT registration based on authorities found in EO 13423 and EO 13514.*

[FAR 23.704\(a\)\(1\)](#) states: “As required by E.O.s 13423 and 13514, agencies, when acquiring an electronic product to meet their requirements, shall meet at least 95 percent of those requirements with [EPEAT]-registered electronic products,” subject to limited exceptions. Accordingly, the legal authority for the FAR EPEAT clause is derived from Executive Order 13423 and Executive Order 13514. No other authorities are referenced.

FAR 23.704(a)(1) implements the following language from [EO 13423](#), sec. 2(d) and (h), excerpted:

“In implementing the policy set forth in section 1 of this order, the head of each agency shall: (d) require in agency acquisitions of goods and services (i) use of sustainable environmental practices, including acquisition of biobased, environmentally preferable, energy-efficient, water-efficient, and recycled-content products, and (ii) use of paper of at least 30 percent postconsumer fiber content; (h) ensure that the agency (i) when acquiring an electronic product to meet its requirements, **meets at least 95 percent of those requirements with an Electronic Product Environmental Assessment Tool (EPEAT)-registered electronic product, unless there is no EPEAT standard for such product....**”

Additionally, FAR 23.704(a)(1) implements the following language from [EO 13514](#), sec. 2(h) and (i), excerpted:

“In implementing the policy set forth in section 1 of this order, and preparing and implementing the Strategic Sustainability Performance Plan called for in section 8 of this order, the head of each agency shall: (h) advance sustainable acquisition to ensure that 95 percent of new contract actions including task and delivery orders, for products and services with the exception of acquisition of weapon systems, are energy efficient (Energy Star or Federal Energy Management Program (FEMP) designated), water-efficient, biobased, **environmentally preferable (e.g., Electronic Product Environmental Assessment Tool (EPEAT) certified)**, non-ozone depleting, contain recycled content, or are non-toxic or less toxic alternatives, where such products and services meet agency performance requirements; (i) promote electronics stewardship, in particular by: **(i) ensuring procurement preference for EPEAT-registered electronic products...**”

*II. EO 13423 and EO 13514 were both revoked in 2015 by EO 13693; however, FAR 23.704(a)(1) was not updated and still relies on revoked authority.*

On March 19, 2015, President Obama issued [EO 13693, “Planning for Federal Sustainability in the Next Decade,”](#) which **revoked both EO 13423 and EO 13514** in their entirety. Specifically, EO 13603, sec. 16(a) and (b) states:

“(a) Pursuant to section 742(b) of Public Law 111-117, I have determined that this order will achieve equal or better environmental or energy efficiency results than Executive Order 13423. **Therefore, Executive Order 13423 of January 24, 2007, is revoked.**

(b) **Executive Order 13514 of October 5, 2009**; Presidential Memorandum of December 2, 2011 (Implementation of Energy Savings Projects and Performance-Based Contracting for Energy Savings); section 1 of Presidential Memorandum of February 21, 2012 (Driving Innovation and Creating Jobs in Rural America through Biobased and Sustainable Product Procurement); and Presidential Memorandum of December 5, 2013 (Federal Leadership on Energy Management), **are revoked.**”

**EO 13693 does not include a requirement or even a preference for the federal government to purchase EPEAT-registered products.** Rather, EO 13693 sec. (i)(iii) directs the federal government to purchase

“environmentally preferable products or services that:

(A) meet or exceed **specifications, standards, or labels recommended by EPA** that have been determined to assist agencies in meeting their needs and further advance sustainable procurement goals of this order; or

(B) meet **environmental performance criteria developed or adopted by voluntary consensus standards bodies** consistent with section 12(d) of the National Technology Transfer and Advancement Act of 1995 (Public Law 104-113) and OMB Circular A-110...”

By continuing to reference revoked EO authority and language provided by this revoked authority, FAR 23.704(a)(1) is not only outdated, but there is no current underlying authority for requiring the federal government to fulfill 95 percent of its electronic product requirements with EPEAT-registered products.

*III. Requiring the federal government to purchase 95 percent of electronic products that are EPEAT-registered, rather than products that comply with one or more voluntary consensus standards, contradicts the intent and legal requirements of EO 13603.*

EPEAT was developed and is maintained by the Global Electronics Council (GEC), a third-party nonprofit that is not a recognized voluntary consensus standards body. GEC develops criteria for EPEAT registration without using a voluntary consensus process as defined by OMB Circular A-110.

As stated above, FAR 23.704(a)(1) requires the majority of federal electronic purchases to be registered with EPEAT—one of many options and, concerningly, a certification framework not based on voluntary consensus standards. In contrast, EO 13603 directs the federal government to purchase environmentally preferable products or services that meet or exceed multiple different specifications, standards, or labels. The FAR’s current sole requirement for EPEAT registration potentially inhibits full and open competition for federal contract opportunities, as it requires all federal suppliers to establish and maintain a relationship and registration with EPEAT and the GEC—a non-governmental third-party entity. This constitutes a barrier to entry to the federal marketplace for suppliers who are not registered with EPEAT, regardless of whether they provide environmentally preferable products or services that meet or exceed multiple other specifications, standards, or labels. Accordingly, FAR 23.704(a)(1), as currently drafted, may also potentially violate the Competition in Contracting Act (CICA). By allowing federal government purchasers to procure electronic products or services that meet on or more underlying voluntary consensus standards—rather than just requiring EPEAT registration as a single acceptable standard—the FAR Council will promote competition while achieving the requirements of EO 13603.

*IV. The existing FAR is causing demonstratable harm to other stakeholders in the areas of environmental standards and ecolabels.*

The limitations on full competition that are imposed through FAR 23.704 are also causing demonstratable harm to the other standards, specifications, and ecolabels for electronic products. Several well-established ecolabels

such as UL ECOLOGO<sup>1</sup>, TCO Certified<sup>2</sup>, and Blue Angel<sup>3</sup> have sought to compete with EPEAT in this space but are unable to because of the specific language of the FAR. Other certifications and labels have not even considered competing as they are not eligible for federal procurement because of the current language of the FAR. Additionally, and as with other government requirements (e.g., for safety, electromagnetic compatibility, etc.), accredited Certifying Bodies should be able to certify to viable standards, such as are owned by IEEE<sup>4</sup> and used for EPEAT, that show conformity for the sake of green procurement.

The sole focus on EPEAT registration by the FAR is also creating a situation where preferable environmental outcomes are being inhibited because of the use of a single ecolabel. By promoting competition in this space, ecolabels will advance environmental outcomes. For example, the UL ECOLOGO and TCO provide the opportunity for manufacturers to pre-certify products before they are put on the market—a verification approach many preferred by many purchasers. TCO also has required criteria that currently go beyond EPEAT required criteria in areas such as mandatory certification to ISO standards in energy management (ISO 50001), workplace health and safety (ISO 45001), and environmental management (ISO 14001). TCO also has required criteria in several other areas related to process chemicals, flame retardants and minimum product reliability requirements that are currently not found in EPEAT. Allowing a robust, competitive marketplace for ecolabels will drive environmental performance and allow manufacturers and other stakeholders to achieve potentially better environmental outcomes.

*V. The FAR Council should amend FAR 23.704 in accordance with EO 13603 and ITI's Petition.*

As stated in ITI's petition for rulemaking, the FAR Council is urged to immediately amend FAR 23.704 and related provisions and clauses to reference EO 13603 authority and processes, including permitting the federal government to purchase electronic products and services certified by multiple specifications, standards, or labels. Doing so will improve competition opportunities for federal contractors and better align with international and industry best practices and standards.

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**Enclosures:**

**ITI Petition to Initiate Rulemaking, dated June 1, 2021**

**Appendix A to ITI Petition to Initiate Rulemaking**

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<sup>1</sup> See <https://www.ul.com/resources/ecologo-certification-program>

<sup>2</sup> See <https://tcocertified.com/>

<sup>3</sup> See <https://www.blauer-engel.de/en>

<sup>4</sup> See <https://standards.ieee.org/ieee/1680.1/>